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U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JL

JAMES P. ITO-ADLER, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

HITACHI, LTD., LG ELECTRONICS,
INC., HITACHI-LG DATA STORAGE,
INC., SONY CORPORATION, SONY
NEC OPTIARC, INC., SONY
OPTIARC, INC., SONY OPTIARC
AMERICA, INC., SAMSUNG
ELECTRONICS COMPANY, LTD.,
TOSHIBA CORPORATION, TOSHIBA
SAMSUNG STORAGE TECHNOLOGY
CORPORATION,

Defendants.

C V 10 1684

CASE NO.: _____

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 James P. Ito-Adler ("Plaintiff"), on behalf of himself and all others similarly situated,
2 brings this Action against the Defendants named herein for violations of federal and state law
3 relating to the price-fixing of the optical disc drive market. The allegations herein are made on
4 information and belief, except those as to Plaintiff which are made from personal knowledge. In
5 support of his Class Action Complaint, Plaintiff states as follows.

6 **NATURE OF THE ACTION**

7 1. This Action arises from a conspiracy among Defendants and their co-conspirators
8 which was intended to, and resulted in, the fixing, the maintenance, and the artificial stabilization
9 of the price at which optical disc drives, as well as products containing optical disc drives, were
10 sold in the United States of America. Optical Disc Drives will be described more fully later in
11 this Complaint. The term "Optical Disc Drive Products" as used in this Complaint encompasses
12 Optical Disc Drives and also products containing Optical Disc Drives (computers with DVD
13 drives, for example). Plaintiff brings this Action on behalf of a class (the "Class") which will
14 consist of all persons and other entities who purchased Optical Disc Drive Products indirectly
15 from the named Defendants in the United States of America on any date between approximately
16 November 1, 2005 and the present (the "Class Period"). Defendants' unlawful conduct resulted
17 in Plaintiff and other Class members paying artificially inflated prices for Optical Disc Drive
18 Products during the Class Period.

19 2. Defendants are among the world's foremost manufacturers of Optical Disc Drives
20 Products, including both stand-alone devices such as home DVD players as well as Optical Disc
21 Drives used in computers and other electronic devices. During the Class Period, Optical Disc
22 Drives were one of the primary means for recording and reading music, movies and other digital
23 data. Over the course of the Class Period, Defendants' sales of Optical Disc Drive Products have
24 yielded billions of dollars in annual revenues and have also expanded exponentially with the
25 increased use of computers by businesses and within households throughout the United States.
26 Today, nearly every computer used or sold in the United States is equipped with an Optical Disc
27 Drive.
28

JURISDICTION AND VENUE

6. Venue as to Defendants is proper in this district pursuant to 15 U.S.C. §§ 15(a), 22, and 28 U.S.C. § 1391(b), (c), in that more than one Defendant resides in the judicial district, is licensed to do business and/or is doing business in this judicial district. The interstate trade and commerce described herein has been carried out, in part, within this district, and a substantial part of the events giving rise to the claims presented herein took place in this district.

Plaintiff

CLASS ACTION COMPLAINT

1 **Defendants**

2 8. Defendant Hitachi, Ltd. ("Hitachi") is a business entity organized under the laws
3 of Japan, with its principal place of business at 6-6, Marunouchi 1-chome, Chiyoda-ku, Tokyo,
4 100-8280, Japan. During the Class Period, Hitachi manufactured, sold and/or distributed Optical
5 Disc Drive Products throughout the United States of America.

6 9. Defendant LG Electronics, Inc. ("LG") is a business entity organized under the
7 laws of Korea, with its principal place of business at 26/F Twin Towers South, 20 Yoido-Dong,
8 Youngdungpo-Gu, Seoul, SEO 150875, Republic of Korea. During the Class Period, LG
9 manufactured, sold and/or distributed Optical Disc Drive Products throughout the United States
10 of America.

11 10. Defendant Hitachi-LG Data Storage, Inc. ("HLDST") is a business entity
12 organized under the laws of Japan with its principal place of business located at 4F MSC Center
13 Bldg., 22-23, Kaigan 3-chrome, Minato-ku, Tokyo, 108-0022, Japan. HLDST is a joint venture
14 that was formed in November 2000 and began operation in January 2001 and is owned 51% by
15 Defendant Hitachi and 49% by Defendant LG. During the Class Period, HLDST manufactured,
16 sold and/or distributed Optical Disc Drive Products throughout the United States of America.

17 11. Defendant Sony Corporation ("Sony") is a business entity organized under the
18 laws of Japan, with its principal place of business located at 1-7-1 Konan, Minato-ku, Tokyo 108-
19 0075, Japan. During the Class Period, Sony manufactured, sold and/or distributed Optical Disc
20 Drive Products throughout the United States of America.

21 12. Defendant Sony NEC Optiarc, Inc. ("Sony NEC Optiarc") was a Japanese
22 company with its principal place of business located at 4-16-1 Okata, Atsugi-shi, Kanagawa, 243-
23 0021, Japan. Sony NEC Optiarc was created in 2006 as a joint venture between Defendant Sony
24 and NEC Corp. in which Sony Corporation had a 55% interest and NEC Corp. had a 45%
25 interest. Defendant Sony purchased NEC Corp.'s interest in September 2008 and renamed the
26 entity Sony Optiarc, Inc. During the Class Period, Sony NEC Optiarc, Inc. manufactured, sold
27 and/or distributed Optical Disc Drive Products throughout the United States of America.
28

1 13. Defendant Sony Optiarc, Inc. ("Sony Optiarc") is the parent corporation of Sony
2 Optiarc America, Inc. and is a business entity organized under the laws of Japan, with its
3 principal place of business located at 4-16-1 Okata, Atsugi-shi, Kanagawa, 243-0021, Japan. As
4 noted above, Sony Optiarc was previously a joint venture between Defendant Sony and NEC
5 Corp., but is now solely controlled by Defendant Sony. During the Class Period, Sony Optiarc
6 manufactured, sold and/or distributed Optical Disc Drive Products throughout the United States
7 of America.

8 14. Defendant Sony Optiarc America, Inc., ("Sony Optiarc America"), is a wholly
9 owned subsidiary of Sony Optiarc, which is in turn the wholly owned subsidiary of Defendant
10 Sony. Sony Optiarc America is a Delaware corporation with its principal place of business
11 located at 1730 N. First Street, San Jose, California 95112. During the Class Period, Sony
12 Optiarc America manufactured, sold and/or distributed Optical Disc Drive Products throughout
13 the United States of America.

14 15. Defendant Samsung Electronics Company, Ltd. ("Samsung") is a business entity
15 organized under the laws of South Korea, with its principal place of business at Samsung Main
16 Building, 250-2 ga Taepyung-ro Chung-gu, Seoul, Republic of Korea. During the Class Period,
17 Samsung manufactured, sold and/or distributed Optical Disc Drive Products throughout the
18 United States of America.

19 16. Defendant Toshiba Corporation ("Toshiba") is a business entity organized under
20 the laws of Japan, with its principal place of business at 1-1, Shibaura 1-Chrome, Minato-Ku,
21 Tokyo 105-8001, Japan. During the Class Period, Toshiba manufactured, sold and/or distributed
22 Optical Disc Drive Products throughout the United States of America.

23 17. Defendant Toshiba Samsung Storage Technology Corporation ("TSST") is a
24 business entity organized under the laws of Japan with its principal place of business located at 1-
25 1, Shibaura 1-Chrome, Minato-Ku, Tokyo 105-8001, Japan. TSST is a joint venture formed on
26 April 1, 2004 and owned 51 % by Defendant Toshiba and 49% by Defendant Samsung. During
27 the Class Period, TSST manufactured, sold and/or distributed Optical Disc Drive Products
28 throughout the United States of America.

1 18. Based on information and belief, there are other partnerships, corporations or other
2 business entities, some of which are currently not known to Plaintiff, who are co-conspirators
3 with Defendants in their illegal restraint of trade, and who have facilitated, abided by, participated
4 in and/or communicated with others about the conspiracy. Plaintiff believes that among these co-
5 conspirators are: Koninklijke Philips Electronics N.V. ("Philips"), Lite-On IT Corporation ("Lite-
6 On"), Philips & Lite-On Digital Solutions Corporation, and Philips & Lite-On Digital Solutions
7 USA, Inc.

8 19. Defendants either directly committed the conduct alleged herein, or Defendants'
9 officers, agents, employees, representatives, or co-conspirators engaged in, authorized or ordered
10 the actions which comprise the conduct alleged herein during the course of the regular
11 management and operation of Defendants' business or affairs.

12 20. Each Defendant acted as the principal, agent or joint venturer of, or for, other
13 Defendants or co-conspirators with respect to the acts, violations and common course of conduct
14 alleged by Plaintiff.

15 21. Whenever this Complaint refers to an act, deed or transaction of a corporation or
16 entity, the Complaint is alleging that the corporation or entity engaged in the act, deed or
17 transaction by or through its officers, directors, agents, employees or representatives while they
18 were actively engaged in the management, direction, control or transaction of the corporation or
19 entity's business or affairs.

20 **CLASS ACTION ALLEGATIONS**

21 22. Plaintiff brings this Action both on behalf of himself, and as a Class Action
22 pursuant to the Federal Rules of Civil Procedure, Rule 23(a), (b)(2), and (b)(3), on behalf of the
23 class (the "Class") which is defined as follows: All persons and other entities who purchased
24 Optical Disc Drive Products indirectly from the Defendants or their subsidiaries in the United
25 States of America on any date between November 1, 2005 and the present (the "Class Period").
26 The Class excludes all Defendants along with their parent companies, subsidiaries, affiliates and
27 co-conspirators, all government entities, and any judges or justices assigned to hear any aspect of
28

1 this action. Plaintiff expects that following consolidation of this action with other similarly filed
2 actions, the Class will be further sub-divided into sub-classes by state.

3 23. Joinder of all members of the Class is not viable due to the great number of
4 persons and individuals who comprise the Class. Plaintiff also believes that, due to the nature of
5 the trade and commerce involved, members of the Class are located throughout the entire
6 geographic United States of America, so joinder of all Class members would again not be viable.
7 Although Plaintiff does not know the exact number of Class members at this time, Plaintiff judges
8 there to be millions of Class members.

9 24. Plaintiff's claims are typical of other Class members' claims. Plaintiff and the
10 other members of the Class bought Optical Disc Drive Products at prices that were artificially
11 maintained and non-competitive. Defendants and their unnamed co-conspirators established
12 those prices through their actions in connection with the restraint of trade alleged herein. Due to
13 Defendants' conduct in violation of state and federal law as described in this Complaint, Plaintiff
14 and the other members of the Class have all suffered damages because they paid inflated prices
15 for Optical Disc Drive Products.

16 25. Plaintiff will fairly and adequately protect the interests of the members of the Class
17 and has retained counsel competent and experienced in class action, antitrust and other complex
18 litigation.

19 26. Final injunctive relief or corresponding declaratory relief with respect to the Class
20 as a whole is appropriate because Defendants have acted or refused to act on grounds generally
21 applicable to the Class.

22 27. There are common questions of law and fact which exist as to all Class members
23 and which outweigh any questions which only affect individual Class members. Some of the
24 questions of law and fact common to the Class are:

- 25 (a) Whether Defendants engaged in a contract, conspiracy, or combination among
26 themselves and other co-conspirators to fix, maintain or stabilize the price of
27 Optical Disc Drive Products sold in the United States of America or to restrict
28 output of such products sold in the United States;

- 1 (b) Whether Defendants' conduct caused the prices of Optical Disc Drive Products
 2 sold in the United States to be at artificially high and non-competitive levels;
 3 (c) Whether Defendants' conduct caused harm to the members of the Class and, if
 4 so, the proper class-wide measure of damages; and
 5 (d) Whether Defendants took measures to conceal the unlawful contract,
 6 conspiracy, or combination described herein; and
 7 (e) Whether Plaintiff and the other members of the Class are entitled to, among
 8 other things, injunctive relief, and if so, the nature and extent of such
 9 injunctive relief.

10 28. A class action is superior to other available methods for the fair and efficient
 11 adjudication of this controversy since joinder of all Class members is not viable. The prosecution
 12 of separate actions by individual members of the Class would impose heavy burdens upon the
 13 courts and Defendants and would create a risk of inconsistent or varying adjudications of
 14 questions of law and fact common to the Class. A class action would achieve substantial
 15 economies of time, effort and expense, and would assure uniformity of decision as to persons
 16 similarly situated without sacrificing procedural fairness.

17 29. Class certification under Rule 23(b)(3) is appropriate for all of the above reasons.
 18 Certification under Rule 23(b)(2) is also appropriate because Defendants acted on grounds
 19 generally applicable to Plaintiffs and members of the Class.

20 30. Plaintiff reserves the right to expand, modify or alter the Class definition in
 21 response to information learned during discovery.

22 INTERSTATE TRADE AND COMMERCE

23 31. Throughout the Class Period, each Defendant, or one or more of its subsidiaries,
 24 sold Optical Disc Drive Products in the United States in a continuous and uninterrupted flow of
 25 interstate commerce and foreign commerce, including through and into this judicial district.

26 32. Defendants' unlawful activities, which are the subject of this Complaint, were
 27 within the flow of interstate trade and commerce, and they have directly and significantly affected
 28

1 interstate trade and commerce in the United States and caused antitrust injury in the United
2 States.

3 33. In 2008, Samsung estimated that the Optical Disc Drive market for personal
4 computers is 313 million units per year and the Optical Disc Drive market for all other
5 applications (e.g., game consoles, camcorders, automotive audio and video, personal video
6 recorders, set top boxes, and CD/DVD players and recorders) is 200 million units per year.

7 **PASS-THROUGH TO INDIRECT PURCHASERS**

8 34. Defendants' conspiracy to raise, fix, or maintain the prices of Optical Disc Drives
9 resulted in Plaintiffs and members of the indirect purchaser Class paying higher prices for Optical
10 Disc Drive Products. Specifically, Defendants' entire overcharge for Optical Disc Drives was
11 passed on to indirect purchasers by direct-purchasers.

12 35. Optical Disc Drives are a commodity product with functionally equivalent
13 products available from the Defendants and other manufacturers, who produce them according to
14 standard specifications and sizes.

15 36. Optical Disc Drives are a distinct, physically-discrete hardware element of Optical
16 Disc Drive Products. They are identifiable and traceable throughout the distribution chain and are
17 not substantially altered as they move through the distribution chain.

18 **FACTS**

19 **Optical Disc Drive Technology and Industry Background**

20 37. Optical discs contain microscopic pits where data is stored. These pits are made
21 from a crystalline metal alloy and are most often pressed into the disc in a spiral arrangement,
22 starting at the center of the disc. Once a disc containing information is inserted into the Optical
23 Disc Drive, the disc spins and a lens inside the device guides a semiconductor laser beam over the
24 disc and a photodiode detects the light reflected from the disc's bumps and pits. The laser scans
25 over the disc's surface, moving outward from the center of the disc. Then the photodiode reads
26 the light's reflection as a binary code (a series of ones and zeros) that the computer translates into
27 usable data. Changes in the intensity of the beams as the lasers hit the pits are detected and
28 translated into electrical signals. The greater the number of pits that can be fit onto the disc, the

1 greater amount of data a disc can store. The pits are approximately 0.8 micrometers on CDs, 0.4
2 micrometers on DVDs, and 0.15 micrometers on Blu-ray discs. The Optical Disc Drives must
3 have lasers of different wavelengths in order to read different disc formats. Blu-ray disc players
4 user a shorter wavelength laser, which is blue-violet, to read discs. Storage capacity can be
5 increased by adding additional layers to the disc. Optical Disc Drives can also write and rewrite
6 on the disc, in addition to reading discs, depending on the technology of the drive and
7 accompanying disc.

8 38. When a recordable disc (*e.g.*, CD-R, DVD-R or BD-R) is inserted into an Optical
9 Disc Drive that has the ability to record data, the Optical Disc Drive's laser is used to selectively
10 heat parts of an organic photosensitive dye layer. Once exposed to the light of the laser, the
11 reflective properties of the disc's surface change, making the photodiode recognize these changes
12 as bumps and pits and allowing it to read the new information on the disc.

13 39. There are half-height and slim models of Optical Disc Drives. Half-height Optical
14 Disc Drives are thicker and typically used in desktop computer towers while slim Optical Disc
15 Drives are thinner and typically incorporated into laptop computers. As the popularity of laptop
16 computers has increased with consumers, the demand for slim optical drives has become greater
17 and, over the next five years, it is expected to overtake half-height demand.

18 40. Table A shows an overview of the names, sizes and capabilities of the main
19 available Optical Disc Drive standards. In spite of the fact that data access speeds and writing
20 speeds vary, all Optical Disc Drives possess the same core technology. Optical Disc Drives that
21 have been built more recently are "backwards compatible" such that Optical Disc Drives with the
22 latest technology can still read first generation CD-ROMs. Since 2006, DVD rewritable drives
23 have been the standard Optical Disc Drives for computers.

Table A: Overview of Optical Disc Drive Standards

Drive Standard	Capacity*	Capability
CD-ROM	700 MB	Read Only
CD-R	700 MB	Read, Write
CD-RW	700 MB	Read, Write, Rewritable
DVD-ROM	4.7 GB	Read Only
DVD-RAM	4.7 GB	Read, Write
DVD-R**	4.7 GB	Read, Write
DVD-RW**	4.7 GB	Read, Write, Rewritable
BD-ROM	25 GB Single Layer;	Read Only

	50 GB Dual Layer	
BD-R	25 GB Single Layer;	Read, Write
	50 GB Dual Layer	
BD-RE	25 GB Single Layer;	Read, Write, Rewritable
	50 GB Dual Layer	

*** Capacities listed are the standard capacities. The capacity may be greater, depending on the number of layers or if the disc can be read double-sided.**

**** Other DVD standards, such as DVD+R/RW, exist which include other features or improvements. See <http://www.videohelp.com/dvd>.**

Sources: See <http://www.videohelp.com/dvd> and <http://www.blu-ray.com/faq/>.

41. The first Optical Disc Drive was invented jointly by Defendant Sony and Philips with the creation of the audio compact disc (audio "CD"). In 1972, Philips announced a

1 technique for storing audio recordings on an optical disc with a small diameter. During the same
2 time period, Sony was exploring optically recording audio on a larger disc but was focusing on
3 developing an error correction technique. In 1978, Sony and Philips agreed on a single format for
4 the disc and the error correction method that would be used. In 1982, the compact disc system
5 was introduced to the public in Japan and Europe. Since the 1980s, several companies have
6 created spin-offs of the CD project by covering specific CD-based applications and extending the
7 previously established standards set by Sony and Philips.

8 42. CD-ROM drives began to make their way into the computer market once standards
9 were established for creating a CD and an optical device that reads the information on the CD.
10 Since the 1990s, when CD-ROM drives became affordable for the average consumer, Optical
11 Disc Drives have been commonly used in computers. Manufacturers subsequently developed
12 Optical Disc Drives for computers that could read and write DVDs and Blu-Ray discs, which can
13 hold more data than a CD-ROM.

14 43. At present, Optical Disc Drives are a standard component on nearly every
15 computer used in the United States. Due to the increasing popularity of personal computers,
16 Defendants ship hundreds of millions of Optical Disc Drives and Optical Disc Drive Products
17 each year, generating billions of dollars in annual revenues. According to an IDC analysis,
18 between 2004 and 2008, worldwide Optical Disc Drive shipments generated over \$45 billion in
19 revenues. Digitimes Research estimates that worldwide Optical Disc Drive shipments increased
20 at an annual rate of approximately 10% since at least 2002, and by 2007 they exceeded 300
21 million.

22 **Characteristics of the Optical Disc Drive Products Industry Fostered a Favorable
Environment for Collusion**

23 44. The Optical Disc Drive Products industry has several characteristics that facilitate
24 a conspiracy, including market concentration, ease of information sharing, multiple interrelated
25 business relationships, significant barriers to entry, and homogeneity/standardization of products.

26 **A. Market Concentration**

27 45. The Optical Disc Drive market is oligopolistic and dominated by a small group of
28 manufacturers, so it is particularly favorable for the collusive conduct that this Complaint alleges.

1 During the Class Period, Defendant HLDST (a joint venture of Defendants LG and Hitachi)
2 controlled about 25% to 30% of the overall annual market share of shipments. During the same
3 time Defendant TSST (a joint venture of Defendants Toshiba and Samsung) controlled over 20%
4 of the market share, and Defendant Sony Optiarc controlled at least 17% of the market share.
5 Thus, the Defendants controlled approximately two thirds of the overall market for Optical Disc
6 Drives and were able fix the prices of Optical Disc Drive Products.

7 **B. Joint Ventures and Coordinated Business Activities**

8 46. Defendants were also involved and relied upon joint ventures and long- standing
9 business relationships within the Optical Disc Drive market which allowed them continuous
10 opportunities to discuss pricing, capacity utilization and other important prospective market
11 information. The joint venture between Defendants Hitachi and LG which established HLDST
12 in November of 2000 was the first of these joint ventures. HLDST began operation in January
13 of 2001. Defendants Toshiba and Samsung consolidated their optical disc drive divisions to form
14 TSST in April 2004. Then, in 2006, Defendant Sony NEC Optiarc, was created as a joint venture
15 between Defendant Sony and NEC Corp.

16 47. The formation of these joint ventures was the result of the exchange of information
17 and constitutes evidence of an ongoing antitrust conspiracy between Defendants. Furthermore,
18 because the nature of the business relations between certain Defendants was mutually beneficial,
19 Defendants not only had the opportunity to conspire but also the financial incentive to do so.
20 When announcing the formation of Sony NEC Optiarc, a spokesman for Sony explained that the
21 joint venture came into existence because: "There was a feeling that those two complementary
22 strengths [Sony and NEC Corp.] would make more sense in a joint venture than competing
23 against each other."

24 **C. Barriers to Entry Into the Optical Disc Drive Industry**

25 48. Significant manufacturing and technological barriers make entry into the Optical
26 Disc Drive industry difficult. In order to compete in the Optical Disc Drive industry, companies
27 need to spend hundreds of millions of dollars on research and development, licensing and
28 manufacturing of products. Additionally, Defendants have been allowed to dictate who enters the

1 market and at what cost due to the ownership and control that they have exerted over Optical Disc
2 Drive technology. Because of these barriers to entry, smaller manufacturers of Optical Disc
3 Drives have found it difficult to compete with Defendants and to overcome the effects of
4 economies of scale. Accordingly, the financial structure of the Optical Disc Drive industry
5 allowed Defendants to implement their antitrust conspiracy by eliminating competition and
6 artificially stabilizing the prices of Optical Disc Drive Products without losing market share.

7 **D. Trade and Business Organizations**

8 49. During the Class Period, Defendants belonged to trade and business organizations
9 focusing on Optical Disc Drive Products and related industries, such as the Optical Storage
10 Technology Association (“OSTA”), the DVD Forum, the International Symposium of Optical
11 Memory (“ISOM”), the Institute of Electrical and Electronics Engineers Photonics Society
12 (“IEEE Photonics Society”) and the DVD6C Licensing Group (“DVD6C”). The DVD Forum is
13 an international organization responsible for the licensing and distribution of DVD products
14 whose “purpose is to exchange and disseminate ideas and information about the DVD Format and
15 its technical capabilities, improvements and innovations,” and its Steering Committee includes
16 Defendants Hitachi, LG Electronics, Samsung, Sony and Toshiba. The members of OSTA
17 include LG Electronics and Sony, and according to its website, OSTA was:

18 incorporated as an international trade association in 1992 to promote the use of
19 recordable optical technologies and products. The organization’s membership
20 includes optical product manufacturers and resellers from three continents,
21 representing more than 85 percent of worldwide writable optical product
22 shipments.

23 They work to shape the future of the industry through regular meetings of
24 Commercial Optical Storage Applications (COSA), DVD Compatibility,
25 Marketing, MPV (MusicPhotoVideo), UDF committees, and a new adhoc [sic]
26 Blue Laser committee.

27 The DVD6C, of which Defendants Hitachi, Samsung and Toshiba are members, is described on
28 its website as “Nine leading developers of DVD technology and formats have formed DVD5C

1 Licensing Group offering one-stop shopping benefit for all potential licensees.”

2 50. These organizations held multiple meetings and conferences which were attended
3 by Defendants and their employees during the Class Period, and these meetings and conferences
4 provided Defendants with the opportunity to meet, discuss and agree upon their pricing of Optical
5 Disc Drive Products. For example, a description of a meeting held by the IEEE Photonics
6 Society in May 2009, which had members of the Program Committee and Advisory Committee
7 from Defendants LG, Toshiba, Samsung, Hitachi and Sony, was described on the IEEE website
8 as “an excellent forum for exchanging information on the status, advances and future directions in
9 the field of optical data storage.”

10 **E. Standardization of Optical Disc Drive Products**

11 51. Since its inception during the 1970s, the Optical Disc Drive industry has been
12 characterized by the standardization of discs (e.g., CD-ROMs, DVD-ROMs) and Optical Disc
13 Drive Products driven by industry participants and a range of industry-related organizations like
14 the International Standardization Organization (“ISO”), International Electrotechnical
15 Commission (“IEC”) and ECMA International. These organizations and their members are
16 dedicated to standardizing the use of information communication technology and consumer
17 electronics.

18 52. The Optical Disc Drive industry is also subject to patents and intellectual property
19 rights which require adoption of standardized product specifications. Philips, which is
20 responsible for the development of CD technology and continues to hold patents and licensing
21 rights relating to that technology, has stated the following:

22 Standardization offers many other advantages to industry as a whole. For
23 example: [1] Improvements to performance, compatibility, reliability, safety and
24 interoperability; [2] Economies of scale and lower costs – for example, by
25 allowing manufacturers to address multiple regions with a single product or
26 manufacturing line; and [3] Cooperation between industry leaders, reducing the
27 risk for ‘first-mover’ companies which pioneer new products or technologies.
28

1 53. The standardization of the Optical Disc Drive industry gave Defendants the
2 mechanism to implement, enforce and oversee their anticompetitive conspiracy to fix the price of
3 Optical Disc Drive Products. Moreover, the result of this standardization is that Optical Disc
4 Drives are commodity products, which buyers decide to purchase primarily, if not exclusively,
5 based on price.

6 **Defendants' Illegal Price Fixing Conduct**

7 54. Plaintiff is informed and believes, and thereon alleges, that, faced with decreasing
8 profits from Optical Disc Drives, Defendants entered into a conspiracy which had the intent and
9 result of fixing, raising, maintaining and stabilizing artificially inflated price levels for Optical
10 Disc Drive Products in the United States in order to preserve and increase their revenues.

11 **GOVERNMENT INVESTIGATIONS**

12 55. Plaintiff is informed and believes, and thereon alleges, that Defendants are
13 currently under investigation by the Department of Justice for anticompetitive conduct in
14 connection with the Optical Disc Drive industry. Plaintiff is further informed and believes, and
15 thereon alleges, that the United States' criminal investigation of the Optical Disc Drive
16 conspiracy is being conducted by the Department of Justice's Antitrust Division in the Northern
17 District of California.

18 56. On October 23, 2009, in a Form 6-K that it filed with the SEC, Defendant Sony
19 disclosed the following:

20 Sony Corporation said today that its U.S. subsidiary, Sony Optiarc America Inc.,
21 has received a subpoena from the U.S. Department of Justice (DOJ) Antitrust
22 Division seeking information about its optical disc drive business. Sony
23 understands that the DOJ and agencies outside the United States are investigating
24 competition in optical disc drives. Sony intends to cooperate fully with the DOJ
25 and other agencies in this inquiry.

26 57. On October 26, 2009, news sources reported that other companies, including
27 Defendants Toshiba, Hitachi, Samsung and LG, had received subpoenas from the DOJ. One
28

1 article states that “[a]ccording to a person familiar with the investigation, the Justice Department
2 started a criminal antitrust probe into the market for optical disc drives in recent months,
3 investigating disc-drive makers for possible price-fixing, bid-rigging and allocation of markets.”
4 News reports indicated that European Union and Singaporean antitrust authorities were
5 conducting similar investigations.

6 58. On October 27, 2009, Defendants Toshiba and Hitachi confirmed that, like
7 Defendant Sony, their Optical Disc Drive operations in the United States had received subpoenas
8 from the DOJ in an increasingly large U.S. Department of Justice investigation into potential
9 criminal antitrust violations involving possible price-fixing, bid-rigging and allocation of markets
10 regarding Optical Disc Drives.

11 59. On October 27, 2009, Gina Talamona, a spokeswoman for the DOJ, confirmed
12 that, “[t]he antitrust division is investigating the possibility of anticompetitive practices in the
13 optical disc drive industry.”

14 60. It is significant that the Defendants’ anticompetitive behavior has been the subject
15 of a criminal grand jury investigation by the DOJ. In order for the DOJ to institute a grand jury
16 investigation, a DOJ Antitrust Division attorney must believe that a crime has been committed
17 and prepare a detailed memorandum to that effect. *See* Antitrust Grand Jury Practice Manual,
18 Vol. 1, Ch. I.B.1 (“[i]f a Division attorney believes that a criminal violation of the antitrust laws
19 has occurred, he should prepare a memorandum requesting authority to conduct a grand jury
20 investigation.”) Furthermore, following a review of the memorandum, the request for a grand
21 jury must be approved by the Assistant Attorney General for the Antitrust Division, based on the
22 standard that a criminal violation may have occurred. *See id.* It is also significant that the DOJ
23 Antitrust Division investigation is criminal, as opposed to civil. The Antitrust Division’s
24 “Standards for Determining Whether to Proceed by Civil or Criminal Investigation” state: “[i]n
25 general, current Division policy is to proceed by criminal investigation and prosecution in cases
26 involving horizontal, per se unlawful agreements such as price fixing, bid rigging and horizontal
27 customer and territorial allocations.” *See* Antitrust Division Manual, Chapter III.C.5.
28

1 Accordingly, the existence of a criminal investigation into the Optical Disc Drive industry
2 supports the existence of the conspiracy alleged herein.

3 HISTORY OF COLLUSION

4 61. Many Defendants named in this Complaint have a long history of collusion and are
5 either presently involved in worldwide investigations into other technology-related products, or
6 have admitted to participating in cartels involving technology-related products.

7 62. An example of this is that several of the Defendants named herein have been
8 implicated in a worldwide price-fixing conspiracy for thin film transistor liquid crystal displays
9 ("TFT-LCD"). On December 15, 2008, a subsidiary of Defendant LG pled guilty to participating
10 in a conspiracy involving TFT-LCD and agreed to pay a \$400 million fine. On May 22, 2009, a
11 subsidiary of Defendant Hitachi pled guilty to participating in a conspiracy involving TFT-LCD
12 and agreed to pay a \$31 million fine. Although it has not been publicly acknowledged by
13 Defendant Samsung, it is widely believed that Samsung is in the U.S. DOJ leniency program with
14 respect to the DOJ's investigation into the market for TFT-LCD, meaning that it has admitted its
15 participation level in the cartel. The TFT-LCD investigation is ongoing, and Defendant Toshiba,
16 as well as other entities, remains under investigation. Such criminal investigation is being
17 conducted by the San Francisco office of the DOJ's Antitrust Division. The Acting Assistant
18 Attorney General in charge of the Antitrust Division said, regarding this investigation, "Hitachi
19 joins three other multinational companies who have admitted to their involvement in fixing prices
20 for LCD panels sold to U.S. companies and that have already paid criminal fines totaling more
21 than \$585 million. This case should send a strong message to multinational companies operating
22 in the United States that when it comes to enforcing the U.S. antitrust laws we mean business."

23 63. Additionally, in 2005 Defendant Samsung agreed to plead guilty to participating in
24 a price-fixing conspiracy involving dynamic random access memory ("DRAM"). Samsung
25 agreed to pay a fine of \$300 million as part of its guilty plea.

26 64. Defendants LG, Hitachi, Toshiba, and Samsung have been under investigation in
27 the European Union ("EU") as well for colluding to fix prices on TFT-LCDs sold in Europe. In
28 November 2007, the EU fined, *inter alia*, Defendant Sony and various related entities and the

Hitachi Maxell Limited joint venture \$110 million for fixing the prices of professional videotapes sold in Europe between 1999 and 2002. Under similar circumstances, Defendants Hitachi and Toshiba were fined by the European Commission for their parts in a conspiracy to control prices and allocate market shares in the market for gas-insulated switchgear between 1988 and 2004.

**ALLEGATION OF ANTITRUST
INJURY TO PLAINTIFF AND THE CLASS**

65. Defendants entered into a continuing contract, conspiracy or combination to unreasonably restrain trade and commerce and fix prices in violation of state and federal law. Among the activities engaged in by Defendants are the following:

- (a) Taking part in meetings and conversations to discuss the price and supply of Optical Disc Drive Products sold in the United States of America;
- (b) Communicating in writing and orally to fix prices of Optical Disc Drive Products;
- (c) Agreeing during those meetings and conversations to manipulate supply and charge prices at specific levels and to otherwise fix, increase, stabilize and/or maintain prices of Optical Disc Drive Products sold in the United States of America in a manner that deprived direct purchasers of free and open competition;
- (d) Issuing price announcements and price quotations in accordance with the agreements reached;
- (e) Selling Optical Disc Drive Products at the agreed-upon, non-competitive prices;
- (f) Selling Optical Disc Drive Products to various customers throughout the United States of America at artificially inflated prices; and
- (g) Providing false statements to the public to explain increased prices for Optical Disc Drive Products.

66. The conspiracy that this Complaint alleges has and continues to have many significant effects, some of which are as follows:

1 (a) Plaintiff and the Class have been charged prices that have been raised, fixed,
2 maintained or stabilized at artificially inflated, non-competitive levels;

3 (b) The benefits of free, open and unrestricted competition in the market for
4 Optical Disc Drive Products have not been provided to Plaintiff and the Class;
5 and

6 (c) The competition in establishing the prices paid in the United States of America
7 and abroad has been unlawfully restrained, suppressed and removed.

8 67. Plaintiff and Class members have been harmed by reason of the violations of state
9 and federal law. The harm suffered by Plaintiff and the Class as a direct result of Defendants'
10 conduct is that Plaintiff and the Class paid supracompetitive prices for Optical Disc Drive
11 Products.

12 **FRAUDULENT CONCEALMENT**

13 68. The existence of the conspiracy alleged in this Complaint was not discovered by
14 Plaintiff and members of the Class, and could not have been discovered through the exercise of
15 reasonable diligence, until October 26, 2009 when the first public reports were released indicating
16 that manufacturers of Optical Disc Drives were being investigated by antitrust authorities in the
17 United States of America and abroad for conspiring to fix prices of Optical Disc Drives.

18 69. Plaintiffs and members of the Class were unaware, prior to October 26, 2009, that
19 Defendants were conducting themselves unlawfully, as alleged in this Complaint, and Plaintiffs
20 and members of the Class were also unaware before October 26, 2009 that they were paying
21 artificially high prices for Optical Disc Drive Products throughout the United States of America
22 during the Class Period.

23 70. Defendants wrongfully concealed the affirmative acts alleged herein, including
24 acts to further the conspiracy, and they carried out those acts in a manner that precluded
25 detection.

26 71. Defendants and their co-conspirators engaged in a successful price-fixing
27 conspiracy concerning Optical Disc Drive Products, which they affirmatively concealed, at least
28 in the following respects:

- (a) By meeting face-to-face secretly to discuss prices, customers and markets of Optical Disc Drive Products sold in the United States of America and elsewhere;
- (b) By using certain methods of communication to evade detection, such as telephonic conversations to discuss prices, customers and markets of Optical Disc Drive Products sold in the United States and elsewhere;
- (c) By agreeing among themselves at meetings and in communications not to discuss publicly, or otherwise reveal, the nature and substance of the acts and communications in furtherance of their illegal scheme;
- (d) By intentionally creating the false appearance of competition; and
- (e) By giving customers and the public pretextual reasons for pricing changes in Optical Disc Drive Products which were materially false and misleading and made for the purpose of concealing Defendants' anti-competitive scheme as alleged herein.

72. As a result of Defendants' fraudulent concealment of their conspiracy, the running of any statute of limitations has been tolled with respect to any claims that Plaintiff and members of the Class have as a result of the anticompetitive and unfair and deceptive conduct alleged in this Complaint.

COUNT I

Injunctive Relief For Violation Of The Sherman Antitrust Act

73. Plaintiff incorporates by reference the allegations in the above paragraphs as if fully set forth herein.

74. Beginning at least as early as November 1, 2005, the exact date being unknown to Plaintiff and exclusively within the knowledge of Defendants, and continuing through the present, Defendants and their co-conspirators entered into and engaged in a contract, combination or conspiracy in unreasonable restraint of trade in violation of Section 1 of the Sherman Act by artificially reducing or eliminating competition for Optical Disc Drive Products in the United States of America.

1 75. The contract, combination or conspiracy has resulted in an agreement,
 2 understanding or concerted action between and among Defendants and their co-conspirators in
 3 furtherance of which Defendants instituted, fixed, maintained, raised or stabilized prices for
 4 Optical Disc Drive Products. Such contract, combination, or conspiracy violated Section 1 of the
 5 Sherman Act, 15 U.S.C. § 1.

6 76. Defendants' contract, combination, agreement, understanding or concerted action
 7 occurred in or affected interstate and international commerce. Defendants' unlawful conduct was
 8 through mutual understandings or agreements by, between and among Defendants.

9 77. In entering into and conducting the conspiracy as agreed, Defendants and their co-
 10 conspirators committed the acts they agreed to commit, including those specifically set forth
 11 herein and additional acts and conduct in furtherance of the conspiracy, with the specific intent
 12 of:

- 13 (a) allocating amongst themselves the production and markets for Optical Disc
 14 Drive Products;
- 15 (b) submitting rigged bids in order to secure and carry out certain Optical Disc
 16 Drive Product contracts; and
- 17 (c) raising, fixing, and maintaining the price of Optical Disc Drive Products.

18 78. The contract, combination or conspiracy has had the following effects:

- 19 (a) Prices charged to Plaintiff and the Class for Optical Disc Drive Products were
 20 raised, fixed, maintained or stabilized at higher, artificially inflated, non-
 21 competitive levels;
- 22 (b) Plaintiff and the Class have been deprived of the benefits of free, open and
 23 unrestricted competition in the market for Optical Disc Drive Products; and
- 24 (c) Competition in establishing the prices paid for Optical Disc Drive Products has
 25 been unlawfully restrained, suppressed and eliminated.

26 79. Plaintiff and the members of the Class have been injured in their business and/or
 27 property and will continue to be injured by paying more for Optical Disc Drive Products
 28

1 purchased indirectly from Defendants and their co-conspirators than they would have paid and
2 will pay in the absence of the conspiracy described herein.

3 80. Plaintiff and the Class are entitled to an injunction against Defendants, preventing
4 and restraining the violations alleged herein.

5 **COUNT II**

6 **Violation Of Massachusetts G. L. c. 93A §2 et seq.**

7 81. Plaintiff incorporates by reference the allegations in the above paragraphs as if
8 fully set forth herein.

9 82. Defendants' intentional and purposeful anticompetitive acts that are described
10 above, including but not limited to acts of collusion to set prices and the actual act of price-fixing
11 itself, were intended to and did in fact cause Plaintiff and members of the Class to pay
12 supracompetitive prices for Optical Disc Drive Products purchased in the Commonwealth of
13 Massachusetts.

14 83. Beginning at least as early as November 1, 2005, the exact date being unknown to
15 Plaintiff and exclusively within the knowledge of Defendants, and continuing through the present,
16 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in
17 violation of 93A § 2.

18 84. The violations of 93A by Defendants were done willfully, knowingly, and in bad
19 faith.

20 85. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff and
21 members of the Class have been injured in their businesses and property in that they paid more
22 for Optical Disc Drive Products than they otherwise would have paid in the absence of
23 Defendants' unlawful conduct.

24 86. Demand has been made upon Defendants pursuant to 93A, §§ 2, 9 more than 30
25 days prior to filing this claim for relief under 93A.

26 87. As a result of Defendants' and their co-conspirators' violation of 93A, Defendants
27 are liable to Plaintiff and the Class for up to three times the damages that Plaintiff and the Class
28

1 incurred, or at the very least the statutory minimum award of \$25 per Optical Disc Drive Product
2 purchase, together with all related court costs and attorneys' fees.

3 COUNT III

4 **Violation Of State Antitrust And Unfair Competition Law**

5 88. Plaintiff incorporates by reference the allegations in the above paragraphs as if
6 fully set forth herein.

7 89. As described above, beginning at least as early as November 1, 2005, the exact
8 date being unknown to Plaintiff and exclusively within the knowledge of Defendants, and
9 continuing through the present, Defendants entered into a contract, combination or conspiracy to
10 fix, raise, maintain or stabilize the price of Optical Disc Drive Products in violation of various
11 state laws.

12 90. As a result of Defendants' illegal conduct, Plaintiff and members of the Class were
13 compelled to pay, and did pay, more than they would have paid in the absence of a conspiracy.

14 91. By reason of the foregoing, Defendants have engaged in conduct in violation of
15 the common law and the following specific state laws:

- 16 (a) Ala. Code §§8-10-1, et seq.;
- 17 (b) Ariz. Revised Stat. §§44-1401, et seq.;
- 18 (c) Cal. Bus. & Prof. Code §§16700, et seq.;
- 19 (d) D.C. Code §§28-4503, et seq.;
- 20 (e) Fla. Stat. §§542.15, et seq.;
- 21 (f) Haw. Rev. Stat. §§480-1, et seq.;
- 22 (g) 740 Ill. Comp. Stat. §§10/1, et seq.;
- 23 (h) Iowa Code § 553.1, et seq.;
- 24 (i) Kan. Stat. §§50-101, et seq.;
- 25 (j) La. Rev. Stat. §§51:121, et seq.;
- 26 (k) Me. Rev. Stat. tit. 10 §1101, et seq.;
- 27 (l) Mich. Comp. Laws §§445.771, et seq.;
- 28 (m) Minn. Stat. §§325D.52, et seq.;

- (n) Miss. Code §§75-21-1, et seq.;
- (o) Neb. Rev. Stat. §§59-801, et seq.;
- (p) Nev. Rev. Stat. §§598A, et seq.;
- (q) N.M. Stat. §§57-1-1, et seq.;
- (r) N.C. Gen. Stat. §§75-1, et seq.;
- (s) N.D. Cent. Code §§51-08.1-01, et seq.;
- (t) R.I. Gen. Laws §§6-36-1, et seq.;
- (u) S.D. Codified Laws §§37-1, et seq.;
- (v) Tenn. Code §§47-25-101, et seq.;
- (w) Utah Code §§76-10-911, et seq.;
- (x) Vt. Stat. tit. 9, §§2451, et seq.;
- (y) W.Va. Code §§47-18-1, et seq.; and
- (z) Wis. Stat §§133.01, et seq.

92. Plaintiff and members of the Class have been injured in their business or property by reason of Defendants' violations alleged in this Count. Their injury consists of paying higher prices for Optical Disc Drive Products than they would have paid in the absence of those violations.

93. The injury to Plaintiff and members of the Class is the type of injury that the above state antitrust laws were designed to prevent, and the injury flows from Defendants' unlawful conduct.

94. Plaintiff and members of the Class seek actual, statutory, and multiple damages as well as costs and attorneys' fees as permitted by law for their injuries by Defendants' violations of the aforementioned statutes.

COUNT IV

Violation Of State Consumer Protection And Unfair Competition Law

95. Plaintiff incorporates by reference the allegations in the above paragraphs as if fully set forth herein.

1 96. As described above, beginning at least as early as November 1, 2005, the exact
 2 date being unknown to Plaintiff and exclusively within the knowledge of Defendants, and
 3 continuing through the present, Defendant engaged in unfair competition or unfair,
 4 unconscionable, deceptive or fraudulent acts or practices in violation of the state consumer
 5 protection statutes by conspiring to defraud consumers or businesses.

6 97. By reason of the foregoing, Defendants have engaged in conduct in violation of
 7 the following specific state laws:

- 8 (a) Alaska Stat. §§45.50.471, et seq.;
- 9 (b) Ariz. Rev. Stat. §§44-1521, et seq.;
- 10 (c) Ark. Code §§4-88-101, et seq.;
- 11 (d) Cal. Bus. & Prof. Code §§17200, et seq.;
- 12 (e) Colo. Rev. Stat §§6-1-101, et seq.;
- 13 (f) Conn. Gen. Stat. §§42-110a, et seq.;
- 14 (g) Del. Code tit. 6, §§2511, et seq.;
- 15 (h) D.C. Code §§28-3901, et seq.;
- 16 (i) Fla. Stat. §§501.201, et seq.;
- 17 (j) Ga. Code. §10-1-390, et seq.;
- 18 (k) Idaho Code §§48-601, et seq.;
- 19 (l) 815 Ill. Comp. Stat. §§ 505/1, et seq.;
- 20 (m) Kan. Stat. §§50-623, et seq.;
- 21 (n) Ky. Rev. Stat. §§367.110, et seq.;
- 22 (o) La. Rev. Stat. §§51:1401, et seq.;
- 23 (p) Me. Rev. Stat. tit. 5, §§207, et seq.;
- 24 (q) Md. Com. Law Code §§13-101, et seq.;
- 25 (r) Mich. Comp. Laws §§445.901, et seq.;
- 26 (s) Minn. Stat. §§8.31, et seq.;
- 27 (t) Mo. Rev. Stat. §§407.010, et seq.;
- 28 (u) Mont. Cod §§30-14-101, et seq.;

- (v) Neb. Rev. Stat. §§59-1601, et seq.;
- (w) Nev. Rev. Stat. §§598.0903, et seq.;
- (x) N.H. Rev. Stat. §§358-A:1, et seq.;
- (y) N.M. Stat. §§ 57-12-1, et seq.;
- (z) N.Y. Gen. Bus. Law. §§ 349, et seq.;
- (aa) N.C. Gen. Stat. §§75-1.1, et seq.;
- (bb) N.D. Cent. Code §§51-15-01, et seq.;
- (cc) Ohio Rev. Code §§1345.01, et seq.;
- (dd) Okla. Stat. tit. 15, §§751, et seq.;
- (ee) Or. Rev. Stat. §§646.605, et seq.;
- (ff) Pa. Stat., tit. 73, §§201-1, et seq.;
- (gg) R.I. Gen. Laws §§6-13.1-1, et seq.;
- (hh) S.C. Code §§ 13-11-1, et seq.;
- (ii) S.D. Code Laws §§37-24-1, et seq.;
- (jj) Tenn. Code §§47-18-101, et seq.;
- (kk) Tex. Bus. & Com. Code §§17.41, et seq.;
- (ll) Utah Code §§13-11-1, et seq.;
- (mm) Va. Code §§59.1-196, et seq.;
- (nn) Wash. Rev. Code §§19.86.010, et seq.;
- (oo) W.Va. Code §§46A-6-101, et seq.;
- (pp) Wyo. Stat. §§40-12-105, et seq.;

98. Plaintiff and members of the Class have been injured in their business or property by reason of Defendants' violations alleged in this Count. Their injury consists of paying higher prices for Optical Disc Drive Products than they would have paid in the absence of those violations.

99. The injury to Plaintiff and members of the Class is the type of injury that the above state consumer protection and unfair competition laws were designed to prevent, and the injury flows from Defendants' unlawful conduct.

100. Plaintiff and members of the Class seek actual, statutory, and multiple damages as well as costs and attorneys' fees as permitted by law for their injuries by Defendants' violations of the aforementioned statutes.

COUNT V

Unjust Enrichment And Disgorgement Of Profits

101. Plaintiff incorporates by reference the allegations in the above paragraphs as if fully set forth herein.

102. As a result of the above conduct, Defendants have been unjustly enriched through overpayments by Plaintiff and other Class members for Optical Disc Drive Products.

103. It would be unjust for Defendants to retain the benefits that they have received from these overpayments.

104. Defendants should thus disgorge all profits resulting from such overpayments, to be paid into a constructive trust from which Plaintiff and members of the Class may receive restitution.

DAMAGES

105. During the Class Period, Plaintiff and the other members of the Class purchased Optical Disc Drive Products directly from Defendants, or their subsidiaries, agents and/or affiliates, and, by reason of the conduct alleged herein, paid more for such products than they would have paid in the absence of such antitrust violations. As a result, Plaintiff and the other members of the Class have sustained damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that the Court enter judgment on his behalf and on behalf of the Class herein, adjudging and decreeing as follows:

- (1) That this action may proceed as a class action, pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3) with Plaintiff as the designated Class Representative and his counsel as Class Counsel;
- (2) That Defendants, their subsidiaries, affiliates, successors, transferees, assignees and the respective officers, directors, partners, agents and

1 employees thereof and all other persons acting or claiming to act on their
2 behalf be permanently enjoined and restrained from continuing and
3 maintaining the combination, conspiracy or agreement alleged herein or
4 from engaging in any other conduct having a similar purpose or effect;

5 (3) That Defendants have:

6 (i) Engaged in a contract, combination and conspiracy in violation of
7 Section 1 of the Sherman Act (15 U.S.C. § 1), and that Plaintiff and
8 the Class have been injured in their businesses and property as a
9 result of Defendants' violation;

10 (ii) Violated Mass. Gen. L. C. 93A;

11 (iii) Violated the state antitrust, consumer protection, and unfair
12 competition laws set forth herein; and

13 (iv) Been unjustly enriched by the conduct alleged herein.

14 (4) That Plaintiff and the members of the Class recover damages sustained by
15 them and/or statutory damages, as provided by state and federal law, and
16 that a judgment be entered in favor of Plaintiff and the Class jointly and
17 severally against the Defendants in an amount to be trebled as permitted;

18 (5) That Plaintiff and the members of the Class be awarded pre-judgment and
19 post-judgment interest, and that such interest be awarded at the highest
20 legal rate provided by law;

21 (6) That Plaintiff and the members of the class recover their costs of this suit,
22 including reasonable attorneys' fees as provided by law; and

23 (7) That Plaintiff and the members of the Class receive such other or further
24 relief as may be just and proper.
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all of the claims asserted in this Complaint so triable.

DATED: April 20, 2010

Respectfully Submitted,

RUKIN HYLAND DORIA & TINDALL LLP

By: 

Peter Rukin

SHAPIRO HABER & URMY LLP

By: /s/ Thomas G. Shapiro

THOMAS G. SHAPIRO

Attorneys for Plaintiff and the proposed Class